

REMARKS

Claim 1 has been amended to make clear that the mixture that is moulded into the pet's chew is indeed a thermoplastic "starch" and not a mixture of starch and protein or starch and a protein binder. The closed language is supported by the specification throughout, which fails to mention addition of any component other than starches, plasticizers, fibrous materials and various additives. Support for the additives, which are optional, is in current claim 14. Claim 5 has been amended to reflect the examples.

No new matter has been added and entry of the amendment is respectfully requested.

The amendment was not sooner made as it was believed that the prior arguments were sufficient to secure allowance. It is believed that the amendment merely clarifies what was taught in the specification as being intended in claim 1.

The Rejections

Claims 1-10, 12-15, 17 and 19-20 were rejected as anticipated by WO01/45517.

Claim 1 as amended is clearly free of this rejection. The '517 application requires both a protein and a starch component. No protein component is permitted in the process of claim 1 as the claim is amended. Accordingly, as amended, claim 1 is free of this rejection.

Claims 1-4, 6-12, 14-15, 17 and 19-20 were rejected as assertedly anticipated by EP 0552897.

Again, the cited document apparently requires a protein binder. As set forth on page 3, at lines 15-18, it is stated that the invention is made by admixing a starch-containing ingredient, a cellulosic fibrous material, a humectant and a proteinaceous binder and oral care additives together for working into a pet chew. It is true that lines 10-11 state that the product "preferably" contains a

proteinaceous binder; however, failure to include it is not an inevitable teaching of the ‘897 document as would be required for anticipation. *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F2d 1264, 20 USPQ2d 1746 (Fed. Cir. 1991). It is also noted that the exemplified composition contains gelatin as a proteinaceous binder.

The above listed claims were not rejected as assertedly obvious over the two cited documents, but applicants note that the type of products suggested by these documents would not include or suggest the product or process as now claimed. The ‘517 PCT publication clearly requires substantial amounts of protein and the ‘897 European patent publication is directed to compositions whose advantageous properties depend on the inclusion of a proteinaceous binder. No binder is included in the present claims. Thus, the properties of the currently claimed compositions would be, and are designed to be, different from those of the cited documents.

Claims 11, 16 and 18 were rejected as assertedly obvious over WO01/45517 taken with AP 552897 in view of EP 0838153.

These claims need not be relied upon to confer patentability.

These details in these claims, however, are not necessarily applicable to just any composition; they are particularly favorable for that presently claimed. Indeed, to import the length of fibers from EP ‘897 into WO ‘517 is not obvious since the ‘517 document is directed to a nutritional pet chew, whereas the ‘897 is directed to a different type of pet chew designed for dental care. Similarly, there is no reason to incorporate the process details of the ‘153 European publication directed to preparing a different product to the product of the present invention.

Claim 22 was rejected as assertedly obvious over WO01/44517 in view of Leo (U.S. 5,419,283). Applicants do not rely on this limitation for patentability.

Conclusion

The claims have been amended to clarify that the invention is directed to a particular type of pet chew which is formed from a thermoplastic starch. It does not contain protein either as a nutritional additive or as a binder. As such, it is a different approach to preparing pet's chew than that described in the primary documents. For this reason, claim 1 and claims dependent thereon are neither anticipated nor made obvious by the cited documents. Reconsideration and passage of claims 1-7 and 9-22 to issue is respectfully requested.

Should minor issues remain that could be resolved over the phone, a telephone call to the undersigned is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit**

Account No. 03-1952 referencing docket No. 313632001800.

Dated: April 11, 2011

Respectfully submitted,

Electronic signature: _____ / Kate H. Murashige /
Kate H. Murashige
Registration No.: 29,959
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
Telephone: (858) 720-5112
Facsimile: (858) 720-5125